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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

11 ANTELOPE VALLEY GROUNDWATER CASES

12 INCLUDED ACTIONS:

13 LOS ANGELES COUNTY WATERWORKS
14 DISTRICT NO. 40 v. DIAMOND FARMING
15 COMPANY, Superior Court of California, County
16 of Los Angeles, Case No. BC 325201;

17 LOS ANGELES COUNTY WATERWORKS
18 DISTRICT NO. 40 v. DIAMOND FARMING
19 COMPANY, Superior Court of California, County
20 of Kern, Case No. S-1500-CV-254-348;

21 WM. BOLTHOUSE FARMS, INC., v. CITY OF
22 LANCASTER, DIAMOND FARMING CO. v.
23 CITY OF LANCASTER, DIAMOND FARMING
24 CO. v. CITY OF PALMDALE WATER
25 DISTRICT, Superior Court of California, County of
26 Riverside, Consolidated Actions, Case Nos. RIC 344
27 436, RIC 344 668 and RIC 353 840

Judicial Council Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**NRG SOLAR ALPINE LLC'S
RESPONSE TO DISCOVERY ORDER
FOR PHASE IV TRIAL**

23 In response to this Court's "Discovery Order For Phase 4 Trial" dated December 12,
24 2012, Cross-Defendant NRG Solar Alpine LLC ("NRG") provides the following responses as an
25 owner of property within the basin and thus as a party claiming overlying groundwater rights.

26
27 **I. FOR ALL PARTIES CLAIMING AN OVERLYING GROUNDWATER RIGHT,**
28 **INCLUDING PUBLIC WATER AND OTHER PRODUCERS WHO ALSO CLAIM**
A PRESCRIPTIVE RIGHT UNDER CATEGORY II BELOW

1 **1. For each parcel of real property the responding party owns or occupies or**
2 **otherwise controls in the Antelope Valley Adjudication Area, please state with particularity**
3 **the following information:**

4 **(A) The Kern County Treasurer Tax Collector's "Assessor Tax Number" or the Los**
5 **Angeles County Office of the Assessor "Assessor's Identification Number" of the parcel. If**
6 **the identifying parcel number has changed since 1999, please state both the current and**
7 **previous number and the date the new identifying parcel number was assigned.**

8 NRG currently owns approximately 600 acres of land located in northern Los Angeles
9 County northwest of the City of Lancaster near the Neenach Substation that is identified by the
10 following Assessor's Parcel Numbers ("APNs"): 3256-015-02; 3256-015-05; 3256-015-06;
11 3256-015-07; 3256-015-08; 3256-015-09; 3256-015-10; 3256-015-11; 3256-015-13; 3256-015-
12 14; 3256-015-15; 3256-015-16; 3256-016-17; 3256-016-20; 3256-016-29; 3256-017-030; 3256-
13 016-33; 3256-016-37; and 3256-016-40. Except for APN 3256-016-040, which was formerly
14 APN 3256-016-900, NRG does not have information on whether the other APNs have changed
15 since 1999.

16 **(B) All record title owners of the parcel from 2000 to the present.**

17 NRG became the owner of the following parcels identified by their APNs in
18 approximately June of 2010 when it purchased the assets of Alta Vista Sun Tower, LLC ("Alta
19 Vista"): 3256-015-05; 3256-015-06; 3256-015-08; 3256-015-10; 3256-015-11; 3256-015-13;
20 3256-015-14; 3256-015-15; 3256-015-16; and 3256-015-17. It is NRG's understanding that Alta
21 Vista had purchased these parcels on the dates shown below: 3256-015-05 (May 20, 2008);
22 3256-015-06 (July 11, 2008); 3256-015-08 (July 10, 2008); 3256-015-10 (May 06, 2008); 3256-
23 015-11 (May 6, 2008); 3256-015-13 (July 11, 2008); 3256-015-14; (October 13, 2008); 3256-
24 015-15 (June 23, 2008); 3256-015-16 (February 22, 2008); and 3256-015-17 (June 10, 2008).

25 NRG also purchased APN 3256-016-17 from Johann G. Berft on January 7, 2011; NRG
26 purchased APN 3256-016-20 from Florita B. Ruskin, Jane Sonet and Marsha Sonet on July 13,
27 2011; NRG purchased APN 3256-016-29 from Yen-Ming and Miao-Jen L. Hwang on December
28 28, 2010; NRG purchased an undivided 65% interest in APN 3256-017-30 from Tammy Thao T.

1 Tran and an undivided 35% interest from Dam Phi Pham in APN 3256-017-030 on December 28,
2 2010; NRG purchased APN 3256-016-33 from Robert Thomas and Irene Blanche La Briola on
3 December 28, 2010; NRG purchased APN 3256-016-37 from Shu Chun Chen on December 28,
4 2010; and NRG purchased APN 3256-016-40 from Los Angeles County on July 26, 2011. NRG
5 does not have any information on how long these parcels were owned by these owners or the
6 names of any other prior owners of the parcels.

7 **(C) Whether a groundwater well existed on the parcel in any or all of calendar years**
8 **2000, 2001, 2002, 2003, 2004, 2011 or 2012.**

9 One groundwater well exists and existed during the years 2011 and 2012 on APN 3256-
10 015-16 and one groundwater well exists and existed during the years 2011 and 2012 on APN
11 3256-015-17. NRG does not know if these wells existed during the years 2000-2004.

12 **(D) Whether a groundwater well was operated on the parcel in any or all of the**
13 **calendar years 2000, 2001, 2002, 2003, 2004, 2011 or 2012.**

14 Groundwater was pumped from the well installed on APN 3256-015-16 during the years
15 2011 and 2012.

16 **(E) The amount of groundwater produced from the parcel for calendar years**
17 **2000, 2001, 2002, 2003, 2004, 2011, and/or 2012.**

18 Approximately 125 acre feet per year ("AFY") of groundwater was pumped during the
19 years 2011 and 2012 from the well installed on APN 3256-015-16. That pumped groundwater
20 was used on the contiguous parcels owned by NRG and identified by the following APNs: 3256-
21 015-05; 3256-015-06; 3256-015-08; 3256-015-10; 3256-015-11; 3256-015-13; 3256-015-14;
22 3256-015-15; 3256-015-16; and 3256-015-17.

23 **(F) The use(s) to which the groundwater produced from the parcel was put on said**
24 **parcel in any or all of calendar years 2000, 2001, 2002, 2003, 2004, 2011, or 2012.**

25 Groundwater pumped from the well installed on APN 3256-015-16 was used during the
26 years 2011 and 2012 for the construction of a solar-energy project located on approximately 600
27 acres of property owned by NRG and identified by the following contiguous APNs: 3256-015-
28 05; 3256-015-06; 3256-015-08; 3256-015-14; 3256-015-10; 3256-015-11; 3256-015-13; 3256-

1 015-15; 3256-015-16; and 3256-015-17. The pumped groundwater was used on these parcels for
2 dust control, soil stabilization/conditioning, and other construction purposes.

3 **(G) If groundwater produced from another parcel was used on the parcel during**
4 **any or all calendar years 2000, 2001, 2002, 2003, 2004, 2011, or 2012, please state the Kern**
5 **County Treasurer Tax Collector's "Assessor Tax Number" or the Los Angeles County**
6 **Office of the Assessor "Assessor's Identification Number" of the parcel(s) from which the**
7 **subject groundwater was produced and identify the owner thereof.**

8 As described above, groundwater pumped from the well installed on APN 3256-015-16
9 was used during the years 2011 and 2012 for purposes of the construction of a solar-energy
10 project located on approximately 600 acres of property owned by NRG and identified by the
11 following contiguous APNs: 3256-015-05; 3256-015-06; 3256-015-08; 3256-015-10; 3256-015-
12 11; 3256-015-13; 3256-015-14; 3256-015-15; 3256-015-16; and 3256-015-17.

13 **(H) The use(s) to which the parcel was put during each of calendar years 2011 and**
14 **2012.**

15 During the calendar years 2011 and 2012, NRG constructed a solar-energy project on
16 approximately 600 acres of property owned by NRG and identified by the following contiguous
17 APNs: 3256-015-05; 3256-015-06; 3256-015-08; 3256-015-10; 3256-015-11; 3256-015-13;
18 3256-015-14; 3256-015-15; 3256-015-16; and 3256-015-17. Pumped groundwater was used on
19 these parcels for dust control, soil stabilization/conditioning, and other construction purposes.

20 **(I) The crop type, if any, grown on the parcel during each of the calendar years**
21 **2000, 2001, 2002, 2003, 2004, 2011, and 2012.**

22 No crops were grown during these years on any of these parcels. However, to the nbest of
23 NRG's knowledge, during the year 2005, carrots were irrigated and grown on 80 acres of APN
24 3256-015-16, and during the years 2006, 2007, and 2008 carrots were irrigated and grown on 460
25 acres of APN 3256-015-16.

26 **(J) If the responding party contends the parcel has groundwater rights based upon**
27 **something other than groundwater production or use, please state the amount of that claim**
28 **for each of the calendar years 2000, 2001, 2002, 2003, 2004, 2011, and 2012, and its legal and**

1 **factual basis therefor.**

2 NRG maintains that it has a right to the reasonable and beneficial use of groundwater from
3 each parcel it currently owns notwithstanding its historic uses because NRG is an overlying
4 owner of each parcel.

5 **(K) State the amount of water rights claimed as the reasonable and beneficial use**
6 **for each such parcel.**

7 Approximately 320 AFY of groundwater was used on APN 3256-015-16 during 2005 to
8 irrigate 80 acres of carrots and approximately 1860 AFY of groundwater was used on APN 3256-
9 015-16 during the years 2007, 2008 and 2009 to irrigate 460 acres of carrots. It is NRG's
10 understanding that the carrots were grown by John Calandri pursuant to a lease with a prior owner
11 of the property.

12 In addition, 125 AFY of groundwater pumped from a well located on APN 3256-015-16
13 was used for construction purposes during the years 2011 and 2012 on approximately 600 acres
14 of property owned by NRG and identified by the following contiguous APNs: 3256-015-05;
15 3256-015-06; 3256-015-08; 3256-015-10; 3256-015-11; 3256-015-13; 3256-015-14; 3256-015-
16 15; 3256-015-16; and 3256-015-17.

17 NRG claims the right to use two AFY of pumped groundwater during the operational
18 period of the Project. This water will be used domestic purposes, the irrigation of approximately
19 ten acres of screening landscape, for the cleaning of solar modules, and for other operational
20 purposes. NRG also claims the right to use an additional 22 AFY of groundwater for the next
21 three to five years to establish the required screening landscape around the solar facility on
22 property it owns. The groundwater for these uses will be obtained from the existing well located
23 on APN 3256-015-16 or from any other well(s) installed in the future on the Site.

24 **(K) [sic] At the responding party's election any other facts that the responding party**
25 **contends will assist the Court in determining the amount of groundwater produced from**
26 **each parcel of land owned or controlled by the responding party in any or all calendar years**
27 **2000, 2001, 2002, 2003, 2004, 2011 and 2012.**

28 To the best of NRG's knowledge, because approximately four AFY of groundwater is

1 required to grow one acre of carrots, approximately 320 AFY of groundwater was used in 2005 to
2 irrigate 80 acres of carrots, and approximately 1840 AFY of groundwater was used during the
3 years 2006, 2007, and 2008 to irrigate the 460 acres of carrots that were grown on APN 3256-
4 015-16 during those years. To the best of NRG's knowledge, approximately 1,000 AFY of
5 groundwater was pumped from the well installed on APN 3256-015-16 to irrigate these carrots,
6 and additional groundwater used to grow the carrots was pumped from an off-site well located to
7 the east of the Site on APN 3256-006-12.

8 **2. For each parcel of real property the responding party owned in the Antelope**
9 **Valley Adjudication Area during calendar years 2000, 2001, 2002, 2003, 2004, 2011 or 2012,**
10 **please state with particularity the following information:**

11 **(A) Whether the responding party leased any or all of the parcel.**

12 NRG did not lease out any of the parcels it owned during these years. It is NRG's
13 understanding that a portion of the Site was leased by a prior owner to John Calandri for the years
14 2005-2008 for the purpose of growing carrots.

15 **(B) The name of the lessee.**

16 Not applicable.

17 **(C) If the parcel was leased, the Kern County Treasurer Tax Collector's "Assessor**
18 **Tax Number" or the Los Angeles County Office of the Assessor "Assessor's Identification**
19 **Number" of the parcel. If the identifying parcel number has changed since 1999, please**
20 **state both the current and previous number and the date the new identifying parcel number**
21 **was assigned.**

22 Not applicable.

23 **(D) How, if at all, the lease or other written agreement allocated credits for the**
24 **groundwater produced by the lessee.**

25 Not applicable.

26 **(E) How much, if any, groundwater was produced by the lessee and delivered to**
27 **another parcel. If so, the Kern County Treasurer Tax Collector's "Assessor Tax Number"**
28 **or the Los Angeles County Office of the Assessor "Assessor's Identification Number" of the**

1 **parcel for the year(s) in which such groundwater was produced and delivered.**

2 Not applicable.

3 **(F) If known, the use(s) to which groundwater was put on the leased parcel for**
4 **calendar years 2011 and 2012.**

5 Not applicable.

6 **3. For all parcels of land identified in response to Request No. 1 above, please state**
7 **with particularity the following information:**

8 **(A) All materials constituting the responding party's *prima facie* showing of the**
9 **amount of groundwater produced from each parcel of land owned or controlled by the**
10 **responding party in calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.**

11 See Declaration of Keith Latham in Support of NRG Solar Alpine LLC's Responses to
12 Discovery Order for Phase IV Trial (Latham Declaration") attached as Exhibit A. Additional
13 information on the previous use of the Site for agricultural purposes and the previous use of
14 groundwater on the Site for those purposes is included in the Mitigated Negative Declaration for
15 the Project dated November 8, 2010, which was issued by the County of Los Angeles ("MND").
16 Because the MND is more than 1,000 pages long, only those portions of the MND relevant to
17 these issues are attached as Exhibit B, and the entire MND is incorporated by reference and can
18 be provided as necessary.

19 **(B) All materials constituting the responding party's *prima facie* showing of the**
20 **use(s) to which the responding party put each parcel of land controlled by the responding**
21 **party in calendar years 2011 and 2012.**

22 See Latham Declaration attached as Exhibit A and the MND attached as Exhibit B.

23 **(C) At the responding party's election, any additional materials that will assist the**
24 **Court in determining the amount of groundwater produced from each parcel of land by the**
25 **responding party in any or all calendar years 2000, 2001, 2002, 2003, 2004, 2011 and 2012.**

26 See Latham Declaration attached as Exhibit A and the MND attached as Exhibit B.

27 **II. FOR ALL PARTIES CLAIMING A NON-OVERLYING RIGHT, INCLUDING**
28 **APPROPRIATIVE, PRESCRIPTIVE OR OTHERWISE**

NRG does not claim any non-overlying rights.

III. FOR ALL PARTIES CLAIMING RETURN FLOW CREDITS

NRG does not claim any return flow credits.

IV. FOR THE FEDERAL PARTIES

NRG is not a federal party claiming federal water rights.

V. FOR ALL RESPONDING PARTIES

1. For each of the items above, please identify the person(s) most qualified to testify on its behalf to the facts alleged and materials produced.

Keith Latham, Vice President, Development for NRG Solar LLC.

DATED: December 21, 2012

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

By: 

Walter E. Rusinek
Attorneys for NRG Solar Alpine LLC

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STATE OF CALIFORNIA

) SS.

I have read NRG SOLAR ALPINE LLC'S RESPONSE TO DISCOVERY ORDER FOR

I, Randall Hickok, am an officer of NRG Solar Alpine LLC, a party to this action, and am

I declare under penalty of perjury under the laws of the State of California that the

Executed on this 21 day of December, 2012, at Carlsbad, California


Randall Hickok, Vice President

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, 530 "B" Street, Suite 2100, San Diego, California 92101. On **December 21, 2012**, I served the within documents:

NRG SOLAR ALPINE LLC'S NOTICE RESPONSE TO DISCOVERY ORDER FOR PHASE IV TRIAL

- ☐ by transmitting via facsimile a copy of said document(s) listed above to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.
- ☒ by electronic mail: by posting the document listed above to the Santa Clara Superior Court website: www.scefilings.org regarding the ANTELOPE VALLEY GROUNDWATER matter.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- ☐ by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 530 "B" Street, San Diego, California 92101 in the ordinary course of business on the date of this declaration.
- ☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **December 21, 2012**, at San Diego, California.



Sarai DeJesus